



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** National Technical Systems, NTS Engineering  
**File:** B-229058  
**Date:** December 10, 1987

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### **DIGEST**

1. Where positive finding of cost realism was based on favorable Defense Contract Audit Agency report on awardee's proposed costs, challenge to that finding based on financial information that does not reflect the awardee's current position provides no basis to question the finding.
2. Contention that agency improperly evaluated awardee's managerial experience, based on allegation that awardee lacked corporate experience, is without merit where awardee's proposal shows that awardee, in fact, had relevant experience. Related assertion that awardee lacks adequate staff to perform contract, based on protester's own speculation of demand on awardee's staff, is not sufficient to establish that agency's evaluation was unreasonable.
3. General Accounting Office will not consider protest of affirmative determination of responsibility absent showing of possible fraud or bad faith or allegation that definitive responsibility criteria were not applied. Protester's disagreement with affirmative determination, which was based on generally favorable information, including positive preaward survey, does not demonstrate bad faith, and Agency's consideration of offeror's general capabilities simply does not equate to application of definitive criteria.

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### **DECISION**

National Technical Systems, NTS Engineering, protests the award of a contract to ACTA, Inc., by the Department of the Air Force under request for proposals (RFP) No. F04703-87-R-0106. NTS challenges the Air Force's assessment of ACTA's cost realism, managerial experience, and organizational capability and capacity. We deny the protest in part and dismiss it in part.

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The contract is for range safety analyses at the Western Space and Missile Center, Vandenberg Air Force Base, on a cost-reimbursement basis for 1 year with four option years. The RFP provided that proposals would be evaluated and scored on the basis of technical, managerial and cost factors, in that order of importance. The Air Force considered ACTA's proposal to be superior to NTS's proposal in the technical and managerial areas, and a Defense Contract Audit Agency (DCAA) assessment of ACTA's proposed costs and accounting system found no deficiencies. ACTA's estimated cost plus fee was less than 1 percent more than NTS's over the 5-year life of the contract, if all options were exercised. The Air Force awarded the contract to ACTA.

NTS contends that ACTA understated the resources needed to finance the contract and, in so doing, understated probable costs. NTS argues that the Air Force therefore should have downgraded ACTA for a lack of cost realism. In support of this assertion, NTS relies on a financial report on ACTA and an extrapolation of NTS's own experience, as the incumbent, in financing receivables. Our review of the record, however, discloses that the information upon which NTS relies is not indicative of ACTA's current position and credit, both of which are more favorable. Moreover, as the Air Force notes, DCAA found ACTA's proposed costs to be reasonable. In our view, this record provides no basis upon which to question the Air Force's assessment of ACTA's cost realism.

NTS's challenge to the Air Force's evaluation of ACTA's managerial experience is premised on the assertion that ACTA, as a very small and relatively new business, could have no corporate experience managing contracts of this size, although NTS concedes that some of ACTA's principals might have relevant personal experience. NTS contrasts its own corporate experience and that of its personnel with ACTA's alleged lack of corporate experience and argues that ACTA, with only one type of experience, could not reasonably have been rated higher than NTS, which offered both.

Contrary to NTS's assertions, we find that ACTA's proposal offered pertinent corporate experience. This contract does not contemplate a single extensive undertaking, but provides for 5 to 10 task orders per year for range safety-related studies and reports. ACTA's proposal shows that ACTA has been conducting studies of this type for governmental and private sector clients since its incorporation in 1982. Moreover, ACTA's successful performance of these tasks was verified in a favorable preaward survey. Consequently, we find that ACTA's explanation of its corporate experience was relevant and that the Air Force's evaluation was reasonable.

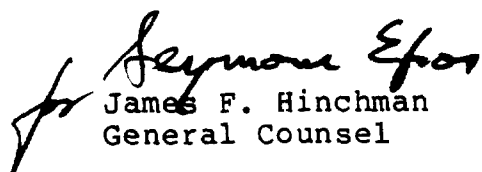
In its initial protest, NTS also contested the Air Force's affirmative determination of ACTA's responsibility, based on the assertion that ACTA lacked a sufficient number of employees to perform the tasks required by the contract, and contended that the Air Force's determination necessarily implied bad faith. In subsequent comments, NTS added the contention that capability and capacity concerns were so intertwined with the technical evaluation criteria that the Air Force's affirmative determination of ACTA's responsibility amounted to a failure to apply definitive responsibility criteria and impugned the reasonableness of the Air Force's technical evaluation of ACTA's proposal. NTS contends that ACTA's existing personnel would not be available for this contract, because of the demands of ACTA's existing workload, and argues that ACTA could not perform this contract without the addition of at least 11 new staff members.

Our Office will not consider a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or an allegation that definitive responsibility criteria were not applied. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987). The protester's disagreement with the Air Force's affirmative determination of ACTA's responsibility, which was based on a favorable preaward survey and a favorable report on ACTA's performance history, is not sufficient to establish bad faith. Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 C.P.D. ¶ 383. Further, consideration of an offeror's general capabilities simply does not equate to the application of definitive responsibility criteria, i.e., standards, such as a specific number of years of experience, applied to measure an offeror's ability to perform a contract. Yale Materials Handling Corp.--Reconsideration, B-226985.2, et al., June 17, 1987, 87-1 C.P.D. ¶ 607. There is no basis, therefore, for us to review the Air Force's affirmative determination of ACTA's responsibility.

Finally, to the extent that NTS's objections may be construed as a challenge to the Air Force's technical evaluation of ACTA's capabilities and capacity, we find them to be without merit. ACTA's proposal evidenced considerable corporate experience with the type of studies contemplated by this contract, as we noted above, and included employment commitments from a sufficient number of qualified personnel to satisfy the Air Force as to ACTA's capabilities. The crux of NTS's charge is that, notwithstanding the apparent content of ACTA's offer, the combination of ACTA's present and new personnel will be inadequate to support this contract and ACTA's existing workload, based on NTS's own view regarding the demands this workload would place on

ACTA's staff. This speculation really focuses on ACTA's responsibility, which we have addressed above, and, in any event, is simply inadequate to persuade us that the Air Force was unreasonable in its evaluation of the merits of ACTA's proposal.

The protest is denied in part and dismissed in part.

James F. Hinchman  
General Counsel